



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/172781

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on June 14, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone. Hearings set for April 19 and May 24, 2016 were rescheduled at the petitioner's request. A hearing set for May 19 was moved to May 24 by the Division of Hearings and Appeals.

The issue for determination is whether the agency correctly determined an overpayment due to receiving continued benefits for an appeal.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency notified petitioner that FS would be reduced from \$428 to \$34 effective December 1, 2015. Petitioner appealed and benefits were ordered to be continued.

3. In Fair Hearing Decision no. FWP-1790270, dated February 15, 2016, the Division of Hearings and Appeals upheld the reduction. A rehearing request was denied on March 29, 2016.
4. By a notice dated February 18, 2016, the agency informed petitioner that she was overpaid \$1,182 in FS from December 1, 2015 through February 29, 2016, due to benefits being continued pending the fair hearing, claim no. [REDACTED]

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Among the overpayment reasons listed under “client error” overpayments are that the household received FS to which it was not entitled pending a fair hearing. Handbook, App. 7.3.2.1. This policy comes directly from the rules in the Code of Federal Regulations, 7 C.F.R. §273.15(k)(1).

Petitioner disagreed with the overpayment claim because she disagreed with the decision in case no. FWP-179020. However, at this point I cannot review the correctness of that decision. The only issue before me is whether the agency may collect FS issued as part of a continued benefits order when the hearing decision upheld the agency action. The rules clearly require the overpayment claim to occur.

CONCLUSIONS OF LAW

The agency correctly issued an overpayment claim for FS benefits issued pending a fair hearing when the hearing decision upheld the agency action.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

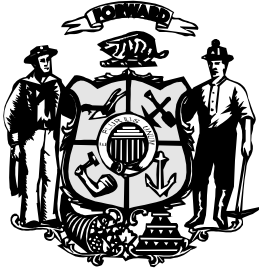
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of June, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 20, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability